

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

FRANK GASCOT-NARVAEZ

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Civil No. 10-1419 (GAG)

OPINION AND ORDER

The instant case is hereby **REMANDED** to the Commissioner of Social Security for proceedings consistent with this order.

The Commissioner at page eleven of his memorandum concedes that the Administrative Law Judge's ("ALJ") failure to find any severe impairment at Step II may have been an error. (See Docket No. 19 at 11.) However, the Commissioner argues it was harmless. (See id.)

The court, upon review, cannot conclude that said error was indeed harmless or not. The ALJ either missed or inadvertently ignored evidence that DDS psychologist Ramón Nevares determined that plaintiff had conditions tantamounting to a severe mental impairment. (See Tr. 371-87); see also Memorandum of Commissioner at 11 n.4. This puts the court in a scenario opposite to that in cases cited by the Commissioner (Docket No. 19 at 12-13), in which it was readily determined that the error harmless. Here, we are not only looking at an ALJ who committed error at Step II, but also one which now prevents the court from determining whether the error was harmless or not because it appears that the ALJ in part did not consider all the evidence of record before him.

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SO ORDERED.

In San Juan, Puerto Rico this 22nd day of August, 2012.

S/Gustavo A. Gelpí

GUSTAVO A. GELPÍ

United States District Judge